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Appointed Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE
LITIGATION

) No. 5:18-CV-06164 (VKD)
)
) **JOINT MOTION FOR INDICATIVE**
) **RULING AS TO WHETHER COURT**
) **WILL APPROVE SETTLEMENT WITH**
) **OBJECTOR**
)
) Date:
) Time: .
) Courtroom:
) Judge: Hon. Edward J. Davila
)

Pursuant to Federal Rule of Civil Procedure 23(e)(5)(B)(ii) and 62.1, Plaintiffs, individually and on behalf of all others similarly situated, by and through their undersigned counsel (“Plaintiffs”), and *pro se* Objector-Appellant Steven Davis jointly move for an indicative ruling whether, upon remand from the United States Court of Appeals for the Ninth Circuit, the Court would approve a stipulation and agreement of settlement reached between them. If the agreement is approved, Davis would agree to dismiss with prejudice his appeal.

Rule 23(e)(5) permits class members to object to proposed class action settlements and requires court approval of any payment in connection with “forgoing, dismissing, or abandoning an appeal from a judgment approving” a settlement. Fed. R. Civ. P. 23(e)(5)(A)-(B)(ii). If the parties do not obtain such approval “before an appeal has been docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.” Fed. R. Civ. P. 23(e)(5)(C). Rule 62.1 permits the court to make an indicative ruling when the court lacks authority to grant a motion because an appeal has been taken. Fed. R. Civ. P. 62.1(a)(3).

Under the afore-mentioned agreement, Class Counsel and the Plaintiffs have agreed to do the following:

1. Write a letter to the Northern District of California’s Local Rules Committee proposing certain modifications to the class action settlement guidelines;
2. Return \$100,000.00 of the attorneys’ fees award instead of \$130,000.00 to the Class based on time spent on the mediation and settlement; and
3. Pay \$800 to cover the Objector-Appellant’s costs on appeal.

The proposed agreement would be in the best interest of the Settlement Class, which was approved by this Court. While Plaintiffs continue to maintain that the appeal lacks merit, the proposed agreement will allow the appeal to be resolved, thereby making the Class Settlement final and expedite payment to the Settlement Class. The agreement was reached through arm’s

length negotiations between Plaintiffs' and Objector-Appellant as a result of a mediation conducted by Ninth Circuit Mediator Kay Suk, and was not the product of coercion or inducement.

Should the Court state that it would grant the motion upon remand, Plaintiffs will notify the Circuit Clerk of the Ninth Circuit, in accordance with Rule 62.1(b) and Federal Rule of Appellate Procedure 12.1, and seek remand of the case to this Court so the motion can be granted.

Based on the foregoing, Plaintiffs and Objector-Appellant respectfully request that the Court indicate whether it would approve of their agreement and stipulation.

Dated: April 23, 2021

/s/ John A. Yanchunis

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JOINT MOTION FOR INDICATIVE RULING AS TO WHETHER COURT WILL APPROVE

SETTLEMENT WITH OBJECTOR

CASE NO: 5:18-CV-06164-EJD

Facsimile: (720) 213-5131

Appointed Class Counsel

/s/ Steven Davis

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Objector-Appellant, Pro Se

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file this Joint Motion for Indicative Ruling as to Whether Court Will Approve Settlement with Objector.

Executed on April 23, 2021.

/s/ John A. Yanchunis

John A. Yanchunis